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Norzian bt Joya & Ors v Kamizah bt Joya & Ors

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HIGH COURT (SHAH ALAM) — CIVIL SUIT NO 22NCVC-187–04 OF 2015
LIM CHONG FONG JC
28 SEPTEMBER 2015

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Civil Procedure — Striking out — Writ and statement of claim — Plaintiff children of aged mother sought to set aside sale/transfer of mother's land to her grand-daughter — Mother mentally sound and not illiterate — Transfer based on consideration of RM150,000 plus natural love and affection — Whether plaintiffs had no locus standi or reasonable cause of action to sue defendants as plaintiffs had no immediate interest in the land — Whether plaintiffs were pursuing supposed future interest as beneficiaries if mother died intestate and they were denied shares in land — Whether allegation that undue influence caused mother to execute transfer irrelevant as court considered transfer more of an inter vivos gift rather than contractual

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The plaintiffs and the first defendant ('D1') were children of Rosmi bt Salamon ('Rosmi') who had, for a consideration of RM150,000 as well as for love and affection, executed a memorandum of transfer of her land to the second defendant ('D2') who was D1's daughter and who had taken care of Rosmi for several years. The purchase price for the land was paid by the third defendant. The plaintiffs' instant suit sought to set aside the sale/transfer of the land to D2 on the ground D1 and D2 had conspired to unduly influence Rosmi to deprive the plaintiffs of their interest in the land. The defendants retorted that the plaintiffs did not, in the first place, have locus standi to bring and maintain the suit and that, in any event, the intended transfer of the land by Rosmi was made of her own free will. The defendants applied under O 18 r 19 of the Rules of Court 2012 ('the ROC') to strike out the plaintiffs' suit. Among the affidavits filed in respect of the application were two by Rosmi, who was 86 years old at the time of the hearing. On the court's proposal, Rosmi was cross-examined by the plaintiffs' counsel and re-examined by the defendants' counsel on her affidavits pursuant to O 38 r 2(2) of the ROC to determine her mental soundness and voluntariness in making the transactions relating to the land.

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Held, allowing the striking out application:

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(1) This was a plain and obvious case that had to be struck out summarily without trial. On the face of the pleadings, the plaintiffs neither had legal standing nor a reasonable cause of action against the defendants. The plaintiffs did not have any immediate interest in the land but were

pursuing the suit based on their supposed future and contingent interest as beneficiaries of the eventual estate of Rosmi after her demise. The existence of all facts material to be proved to pursue the plaintiffs' legal interest successfully was absent here. It would have been different if Rosmi had died (particularly under intestacy) and there had ensued a dispute over the entitlement of the land amongst the parties as beneficiaries thereto. The alleged conspiracy by D1 and D2 therefore appeared to be presently far-fetched (see paras 20 & 27).

(2) Rosmi, as the owner of the land, had every right to deal with it in the way she pleased including selling or giving it away as an inter vivos gift. It was irrelevant whether there was undue influence. Notwithstanding that RM150,000 was paid to Rosmi for her subsistence, the court considered the nature of the transfer of the land in the instant case to be more of an inter vivos gift (see paras 21 & 26).

(3) After having observed Rosmi's testimony under severe cross-examination on her affidavits, the court was satisfied that she was mentally sound and not illiterate and that she had decided to transfer the land to D2 voluntarily and for good consideration (the valuation report tendered in evidence showed RM150,000 was a fair market value for the land). In other words, there was no pressure, manipulation or trickery exerted by D1 and D2 on Rosmi when she made her decision (see paras 23 & 26).

[Bahasa Malaysia summary

Plaintif-plaintif dan defendan pertama ('D1') adalah anak-anak Rosmi bt Salamon ('Rosmi') yang telah bagi balasan sebanyak RM150,000 dan juga bagi cinta dan kasih sayang, melaksanakan memorandum pemindahan tanahnya kepada defendan kedua ('D2') yang mana adalah anak perempuan D1 yang telah menjaga Rosmi untuk beberapa tahun. Harga jualan dibayar oleh defendan ketiga. Tindakan plaintif ini memohon untuk mengetepikan jualan/pemindahan tanah tersebut kepada D2 atas alasan D1 dan D2 telah berpakat untuk mempengaruhi Rosmi untuk menafikan plaintif-plaintif terhadap kepentingan mereka dalam tanah tersebut. Defendan-defendan menempelak bahawa plaintif-plaintif tidak, pada mulanya, mempunyai locus standi untuk membangkitkan dan mengekalkan tindakan dan bahawa, walau bagaimanapun, pemindahkan tanah yang diniatkan oleh Rosmi telah dibuat dengan kerelaan dirinya sendiri. Defendan-defendan memohon di bawah A 18 k 19 Kaedah-Kaedah Mahkamah 2012 ('KKM') untuk membatalkan tindakan plaintif-plaintif. Di antara afidavit-afidavit yang difailkan berkaitan permohonan adalah dua oleh Rosmi, yang mana adalah 86 tahun pada masa pendengaran. Atas cadangan mahkamah, Rosmi diperiksa balas oleh peguam plaintif-plaintif dan diperiksa semula oleh peguam defendan-defendan atas afidavit-afidavitnya berikutan A 38 k 2(2) KKM untuk menentukan kewarasan mentalnya dan kesukarelaan dalam membuat transaksi-transaksi berkaitan tanah tersebut.

Diputuskan, membenarkan permohonan pembatalan:

(1) Ini adalah kes yang biasa dan jelas untuk dibatalkan secara terus tanpa perbicaraan. Atas pliding, plaintif-plaintif tidak mempunyai hak undang-undang ataupun kausa tindakan munasabah terhadap defendan-defendan. Plaintif-plaintif tidak mempunyai kepentingan segera dalam tanah tersebut tetapi meneruskan tindakan berdasarkan atas masa hadapan dan kepentingan kontinjen mereka sebagai benefisiari-benefisiari estet akhir Rosmi selepas kematiannya. Kewujudan kesemua fakta material hendaklah dibuktikan untuk meneruskan kepentingan undang-undang plaintif-plaintif dengan berjaya tidak wujud di sini. Ia adalah berbeza jika Rosmi meninggal dunia (terutamanya tanpa berwasiat) dan berlakunya pertikaian ke atas hakmilik tanah di antara pihak-pihak sebagai benefisiari-benefiasiari kepadanya. Dakwaan pengkomplotan oleh D1 dan D2 oleh itu seperti tidak masuk akal akhirnya (lihat perenggan 20 & 27).

(2) Rosmi, sebagai pemilik tanah, mempunyai hak untuk berurusan dengannya dalam cara yang dia suka termasuk menjual atau memberinya sebagai hadiah inter vivos. Ia adalah tidak relevan sama ada terdapat pengaruh tak wajar. Meskipun bahawa RM150,000 dibayar kepada Rosmi bagi sara hidupnya, mahkamah mempertimbangkan sifat pemindahan tanah dalam kes ini lebih kepada hadiah inter vivos (lihat perenggan 21 & 26).

(3) Selepas memerhati keterangan Rosmi di bawah pemeriksaan balas keras ke atas afidavit-afidavitnya, mahkamah berpuas hati yang dia adalah adalah waras dan tidak buta huruf dan bahawa dia telah memutuskan untuk memindahkan tanah tersebut kepada D2 secara sukarela dan balasan baik (laporan penilaian yang diserahkan dalam keterangan menunjukkan RM150,000 adalah nilai pasaran adil bagi tanah tersebut). Dalam perkataan lain, tidak terdapat tekanan, manipulasi atau penipuan dilakukan oleh D1 dan D2 ke atas Rosmi apabila dia membuat keputusannya (lihat perenggan 23 & 26).]

Notes

For cases on writ and statement of claim, see 2(5) *Mallal's Digest* (5th Ed, 2015) paras 9046–9062.

Cases referred to

Bandar Builder Sdn Bhd & Ors v United Malayan Banking Corporation Bhd [1993] 3 MLJ 36, SC (refd)

Enersafe Sdn Bhd (formerly known as General Tractors Services Sdn Bhd) v Megarina Sdn Bhd [2006] 4 MLJ 271; [2006] 2 CLJ 1021, CA (refd)

Gan Seng Kee v Yap Yok Lan [2015] MLJU 885; [2015] AMEJ 916, HC (refd)

Hooi Cheng Kwong & Anor v Paul Hooi [1981] 2 MLJ 306 (refd)

A *Ibrahim bin Mohamad v Ketua Polis Daerah Johor Baru & Ors* [1996] 5 MLJ 15; [1996] 1 LNS 77, HC (refd)
Lim Kean v Choo Koon [1970] 1 MLJ 158 (refd)
Tan Guat Luang v Tan Bee Keow [2011] MLJU 1248; [2011] 1 LNS 1617, HC (distd)
B *Zaleha bte Ariffin (as legal representative of Ibrahim bin Ariffin, deceased (Administrator of the Estate of Jah bte Hamzah, deceased)) v Salmah bte Md Zain* [2001] 6 MLJ 234, HC (refd)

Legislation referred to

C National Land Code Form 14A
Rules of Court 2012 O 18 r 19, O 38 r 2(2)

Mohammed Naseer Yusof (Mohamad Fauzi Abd Samad with him) (The Law Chambers of Fuazi & Nasser) for the plaintiffs.
D *Hazman bin Ahmad (Nadirah Izyan bt Azaddin with him) (Omar Ismail Hazman & Co) for the defendants.*

Lim Chong Fong JC:

E INTRODUCTION

[1] This is a suit brought by the plaintiffs to avoid the sale and/or transfer of land from Rosmi bt Salamon to the second defendant.

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[2] The plaintiffs are all individuals and siblings.

[3] The first defendant is the youngest sibling amongst the plaintiffs as well as the mother of the second defendant. The third defendant is the person who
G paid for the purchase of the land by the second defendant.

[4] Rosmi bt Salamon who is presently 86 years of age is the mother of the plaintiffs and the first defendant. Accordingly, she is also the grandmother of the second defendant.
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[5] By a notice of application dated 10 June 2015 (encl 8), the defendants applied to strike out the plaintiffs' writ and statement of claim pursuant to O 18 r 19 of the Rules of Court 2012.

I

[6] The relevant affidavits for purposes of the application are:

(a) affidavit in support affirmed by the first defendant on 5 June 2015;

(b) affidavit in support affirmed by the third defendant on 4 June 2015;

(c) further affidavit in support affirmed by Rosmi bt Salamon on 4 June 2015;

(d) affidavit in reply to the first defendant's affidavit in support affirmed by the third plaintiff on 25 June 2015;

(e) affidavit in reply to the third defendant's affidavit in support affirmed by the third plaintiff on 25 June 2015;

(f) affidavit in reply to Rosmi bt Salamon's further affidavit in support affirmed by the third plaintiff on 25 June 2015;

(g) affidavit in reply to the third plaintiff's affidavit affirmed by the first defendant on 10 July 2015;

(h) affidavit in reply to the third plaintiff's affidavit affirmed by the second defendant on 9 July 2015;

(i) affidavit in reply to the third plaintiff's affidavit affirmed by the third defendant on 9 July 2015; and

(j) affidavit in reply to the third plaintiff's affidavit affirmed by Rosmi bt Salamon on 9 July 2015.

[7] After reading the written submission of the parties, the parties at the hearing on 28 August 2015 consented to my proposal that Rosmi bt Salamon be cross-examined on her affidavits pursuant to O 38 r 2(2) of the Rules of Court 2012 to determine her mental soundness and voluntariness in making the land transactions. Consequently, Rosmi bt Salamon was on 14 September 2015 cross-examined by the plaintiffs' counsel and re-examined by the defendants' counsel.

[8] I received further written submission of the parties and heard further oral arguments of counsel on 23 September 2015.

SALIENT FACTS

[9] From the affidavits that were filed, Rosmi bt Salamon is the registered owner of the land held under GM 790 Lot 1586 Mukim Renggam, Daerah Kluang, Negeri Johor Darul Takzim ('land').

[10] She was initially desirous to sell and transfer the land to the first defendant in consideration of a sum of RM150,000. A sale and purchase agreement dated 10 February 2015 was executed.

[11] However since the first defendant was discovered to be an undischarged bankrupt, the aforesaid sale and purchase transaction was discarded and not

enforced. Instead and with the knowledge of the first defendant, Rosmi bt Salamon decided to transfer the land to the second defendant who has taken care of her for several years. Thus she subsequently executed a Form 14A transfer of the land to the second defendant in consideration of both a lump sum RM150,000 payment as well as for love and affection.

[12] The transfer of the land to the second defendant is however suspended by reason of the private caveat lodged by the first plaintiff on 15 February 2015.

[13] Subsequent thereto, the plaintiffs filed this suit on 3 April 2015.

CONTENTION OF THE PARTIES

[14] Primarily, the plaintiffs' case is that the first defendant conspired with the second defendant to unduly influence Rosmi bt Salamon to deprive the plaintiffs of their interest in the land. Accordingly, they sought for the various declarations in relation to the intended transfer of the land as prayed in their statement of claim.

[15] The defendants in retort submitted that the plaintiffs do not in fact and in law have legal standing to bring, let alone maintain this suit. In any event, the defendants stressed that the intended transfer of the land was made by Rosmi bt Salamon as owner of the land on her own free will.

FINDINGS OF THE COURT

[16] This is a striking out application under O 18 r 19 of the Rules of Court 2012 and it is therefore apt for me to reproduce the rule:

> Striking out pleadings and endorsements (O 18 r 19)
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> (1) The Court may at any stage of the proceedings order to be struck out or amended any pleading or the endorsement, of any writ in the action, or anything in any pleading or in the endorsement, on the ground that –
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> (a) it discloses no reasonable cause of action or defence, as the case may be;
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> (b) it is scandalous, frivolous or vexatious;
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> (c) it may prejudice, embarrass or delay the fair trial of the action; or
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> (d) it is otherwise an abuse of the process of the Court,
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> and may order the action to be stayed or dismissed or judgment to be entered accordingly, as the case may be.
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> (2) No evidence shall be admissible on an application under subparagraph (1)(a).

[17] In the Supreme Court case of *Bandar Builder Sdn Bhd & Ors v United*

Malayan Banking Corporation Bhd [1993] 3 MLJ 36, Mohamed Dzaiddin SCJ (later CJ) held at p 43 as follows:

> The principles upon which the court acts in exercising its power under any of the four limbs of O 18 r 19(1) of the RHC are well settled. *It is only in plain and obvious cases that recourse should be had to the summary process under this rule* (per *Lindley MR in Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd*), *and this summary procedure can only be adopted when it can be clearly seen that a claim or answer is on the face of it 'obviously unsustainable'* (see *AG of Duchy of Lancaster v L & NW Rly Co*). *It cannot be exercised by a minute examination of the documents and facts of the case, in order to see whether the party has a cause of action or a defence* (see *Wenlock v Moloney & Ors*). The authorities further show that if there is a point of law which requires serious discussion, an objection should be taken on the pleadings and the point set down for argument under O 33 r 3 (which is in pari materia with our O 33 r 2 of the RHC) (see *Hubbuck & Sons Ltd v Wilkinson, Heywood & Clark Ltd*). The court must be satisfied that there is no reasonable cause of action or that the claims are frivolous or vexatious or that the defences raised are not arguable. (Emphasis added.)

[18] More recently in the Court of Appeal case of *Enersafe Sdn Bhd (formerly known as General Tractors Services Sdn Bhd) v Megarina Sdn Bhd* [2006] 4 MLJ 271; [2006] 2 CLJ 1021, Zulkefli Makinudin JCA (now CJ Malaya) summarised it as follows at p 276 (MLJ); p 25 (CLJ):

> [12] We find it is most appropriate here to state the well established principle in that the power of striking out pleadings under O 18 r 19 of the RHC as invoked by the appellant in this case is too well-known that it can only be exercised when the respondent's claim on the face of it is obviously bound to fail.

[19] The defendants also rely on the case of *Ibrahim bin Mohamad v Ketua Polis Daerah Johor Baru & Ors* [1996] 5 MLJ 15; [1996] 1 LNS 77 where Abdul Malik Ishak J (later JCA) held as follows:

> It must be borne in mind that such a prohibition as clearly laid out in O 18 r 19(2) of the RHC is not meant to decorate the pages of the RHC but rather it should be vigorously applied and obeyed. The Rules Committee must have devised the rules for the expeditious despatch of litigation and, consequently, the courts must simply not stand idle but instead rise up to the occasion and enforce it accordingly. It is not surprising to note with awe that Mohamed Azmi FJ speaking for the Federal Court in *New Straits Times (M) Bhd v Kumpulan Kertas Niaga Sdn Bhd & Anor* [1985] 1 MLJ 226 (FC), in strong terms construed O 18 r 19(1)(a) of the RHC in this way (at p 227):
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> > It is therefore clear law that in an application to strike out pleadings under O 18 r 19(1)(a), no evidence shall be admissible, and the court must consider only the pleadings for the purpose of determining whether the statement of claim disclosed no reasonable cause of action or the statement of defence disclosed no defence. The test to be applied is whether on the face of the pleading, the court is prepared to say that the cause of action or the defence is obviously

unsustainable (see *A-G of the Duchy of Lancaster v L and NW Ry Co* [1892] 3 Ch 274).

Syed Agil Barakbah J in *Abu Bakar bin Haji Yusuf v Mohamed Hamzah bin Hanapiah & Anor* [1978] 2 MLJ 78 in the same vein said at p 79:

> Where the ground for striking out the statement of claim is that it discloses no reasonable cause of action, no affidavit is admissible. That is clear from the terms of the rule itself (per Chitty J in *Republic of Peru v Peruvian Guano Co* (1887) 36 Ch D 489).

In *Karpal Singh & Anor v PP* [1991] 2 MLJ 544 (SC), the then Supreme Court had to consider the question of 'whether the court has a general inherent power to protect its process from abuse to safeguard an accused person from oppression or prejudice by striking out frivolous proceedings?', and Abdul Hamid Omar LP speaking for the Supreme Court in erudite terms had this to say at p 549:

> The court must be careful that the decision is not in conflict with the intention of the legislature as indicated in statutory powers. The inherent power apparently cannot be invoked to override an express provision of law or when there is another remedy available. Where the legislature has provided a particular mode of action or has vested an authority with powers to act in a particular manner and has prescribed the conditions limiting the scope of such action, the court cannot act outside those powers and conditions.

Translating the sage words of Abdul Hamid LP to the present case, it can be said that the RHC has set conditions limiting the court to act within it and not outside its scope; always bearing in mind that the court cannot on its own accord override an express procedural requirement laid out in the RHC. *Be that as it may, this court is invested with extensive powers to strike out pleadings, to dismiss actions by plaintiffs or for that matter to enter judgments against defendants. These powers are necessary evils. It is necessary for the courts generally to not only enforce the basic rules of pleadings but also to take immediate steps to dispose of proceedings which are hopeless, baseless or without foundation or are otherwise an abuse of the process of the court. The courts normally exercise these powers by summary process, operating speedily and at an early stage of the proceedings. Without a doubt it is an effective method to dispose of proceedings without the need to call witnesses.* (Emphasis added.)

[20] On the face of the pleadings and as submitted by the defendants, the plaintiffs in my view neither have legal standing nor a reasonable cause of action against the defendants. They do not have any immediate interest in the land. It seems to me that they are pursuing this suit based on their supposed future and contingent interest as beneficiaries of the eventual estate of Rosmi bt Salamon after her demise. In this regard, the plaintiffs have not cited any case authority to support the sustainability of their action. As a matter of general principle, it is clear from the judgment of Ong J in *Lim Kean v Choo Koon* [1970] 1 MLJ 158 that:

> A cause of action normally accrues when there is in existence a person who can sue and another who can be sued, and when all the facts have happened which are

material to be proved to entitle the plaintiff to succeed (see *Halsbury's Laws of England* (3rd Ed) pp 193–194).

I am of the view that the third element, that is to say the existence of all facts that are material to be proved to pursue the plaintiffs' legal interest successfully is absent here. It would be different if Rosmi bt Salamon has passed away (particularly under intestacy) and there is ensuing dispute over the entitlement of the land amongst the plaintiffs and defendants as the beneficiaries thereto. The alleged conspiracy by the first and second defendants therefore appears to me to be presently far-fetched.

[21] Be that as it may, I am of the view that Rosmi bt Salamon as the owner of the land has every right to deal with it in the way she pleases including selling or giving it away as an inter vivos gift. It is irrelevant whether there was undue influence. This is seen in the case of *Zaleha bte Ariffin (as legal representative of Ibrahim bin Ariffin, deceased (Administrator of the Estate of Jah bte Hamzah, deceased)) v Salmah bte Md Zain* [2001] 6 MLJ 234 where Mohd Hishamuddin J (later JCA) held at p 239 that the issue whether or not there was undue influence exerted by the defendant on the deceased was irrelevant. As the transfer was a result of the lots to the defendant by way of 'hibah', the transfer was a gift inter vivos and hence not contractual in nature. I agreed and have adopted His Lordship's reasoning in *Gan Seng Kee v Yap Yok Lan* [2015] MLJU 885; [2015] AMEJ 916.

[22] In any event, it was held by Choor Singh J in *Hooi Cheng Kwong & Anor v Paul Hooi* [1981] 2 MLJ 306 that the mere relationship of mother and son and the fact that they were living together is in itself also not sufficient to presume undue influence. The relationship and fact of living together do not per se suggest special control.

[23] After having observed the testimony of Rosmi bt Salamon under intense cross-examination by the plaintiffs' counsel on her affidavits, I am satisfied that she is mentally sound and she has decided to transfer the land to the second defendant voluntarily. In other words and as submitted by the defendants' counsel, there was no pressure, manipulation and trickery exerted by the first and second defendants on her when she made that decision. Albeit a bit slow whilst answering the questions because of her hearing problem that required the question to be repeated at times and difficulty reading the text of her affidavits because of her poor eye sight, I am positive that she is not illiterate. Moreover I am particularly impressed with her alertness and ability to relate and respond to the material issues. She even stressed to me that she is already in her golden years and is desirous to have this matter resolved soonest before it gets more complicated in the event of her demise.To illustrate, I reproduce the closing excerpts of her testimony herein below:

Question: Ada siapa siap paksa nenek nak jual tanah?

Answer: Tak ada! Hati ke hati. Harta tu ... harta saya, kebun ... kebun saya. Hati kehati memang saya nak jual. Kerana saya ni dah tua, dah tak larat, jadi saya nak jual.

Question: Ada Kamizah paksa nenek jual?

Answer: Tak ada! Tak ada orang paksa. Orang paksa tak ada. Orang ugut tak ada. Hati ke hati.

Question: Jadi, nenek tandatangan dokumen-dokumen tersebut ada tak sesiapa paksa?

Answer: Tak ada! Semua tu saya yang nak ... Saya dah tua, tanah saya nak jual 'kenapa mak nak jual?' Ya lah, mak masih hidup, anak dah kecoh kecoh, kalau mak mati nanti, apa lagi. Sekarang saya nak jual, duitnya nak masuk bank, ambil sikit-sikit untuk makan. Itu aje. Saya tak nak cakap dengan peguam-peguam. Saya nak cakap dengan Yang Arif, saya cakap tanah saya tu memang ikhlas, hati ke hati, saya nak jual, dengan cucu saya. Pasal cucu saya tu ramaikan, dia yang jaga saya, dulu sekolah pun ikut saya. Dah besar panjang dah kerja pun dia jaga saya, 6 tahun ke 7 tahun. Pergi klinik, pergi hospital, dia yang bawa. Jadi saya nak duduk dengan dia ...

[24] I am aware that the plaintiffs wish to rely on the case of *Tan Guat Luang v Tan Bee Keow* [2011] MLJU 1248; ; [2011] 1 LNS 1617 where the court found and avoided the transfer of the lands by reason that the deceased was suffering from senility due to her old age of 84 years and cancer. She had informed all her children that the lands were to be distributed to them in equal shares before the deceased was certified to have suffered from senility. I find that the facts in that case are clearly distinguishable from the herein especially on the mental state of the transferor of the land, Rosmi bt Salamon.

[25] In addition, the plaintiffs also pointed to a discrepancy in the particulars of the written sale and purchase agreement of the land dated 10 February 2015 executed between the first defendant and Rosmi bt Salamon in the copy that came to the possession of the plaintiffs and the copy held by the first defendant and Rosmi bt Salamon. My view is that the allegedly discrepancy is irrelevant because the present transfer of the land in question is between Rosmi bt Salamon and the second defendant. The sale and purchase transaction between the first defendant and Rosmi bt Salamon has been discarded and no longer enforced.

[26] Consequently, I find that the intended transfer of the land from Rosmi bt Salamon to the second defendant has been made voluntarily with a sound mind and for good consideration, to wit: RM150,000 and love and affection as stated in the Form 14A. I also observed that the sum of RM150,000 is a fair market value for the land based on the valuation report of Messrs Stocker Roberts & Gupta's valuation report dated 25 February 2015.Notwithstanding that RM150,000 is paid to Rosmi bt Salamon for her subsistence, I consider the nature of the transfer of the land to be more an inter vivos gift.

CONCLUSION

[27] In the circumstances and applying the principles as laid down on striking out, I find and hold this is a plain and obvious case that should be struck out summarily and needn't await trial.

[28] I hence allow encl 8 with costs of RM5,000.

Striking out application allowed.

Reported by Ashok Kumar